Which Employment Laws Apply when Provincially Regulated Employees Work on Federally Regulated Sites?



Coverage under employment standards law depends on whom employees work for rather than where they work.

Under Canada's federal system, each province gets to make its own employment laws while the national government regulates activities that cross provincial lines. And that's a beautiful thing, at least as a theory. But in real life, it can get confusing, especially when federally- and provincially-regulated companies work side by side at the same site. This scenario explains how to sort out which law applies in the common scenario where work is done by employees of a provincially-regulated company at a site controlled by a federally-regulated employer.

SITUATION

An airport authority for a major airport in Québec hires a local construction company to repave runways. The contractor and its employees are subject to the Québec *Labour Code*, which requires overtime to be paid after 44 hours of work in a single week. The airport authority that hires the contractor is regulated under the *Canada Labour Code*, under which employees are due overtime after 40 hours. The paving contractor's employees work 43 hours and demand 3 hours of overtime pay.

QUESTION

Are the employees entitled to overtime pay?

> **A.** No, because they didn't work the necessary 44 hours required for overtime under Québec law
>
> **B.** Yes, because they worked the necessary 40 hours required for overtime under federal law
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> **C.** Yes, because federal employment laws always supersede provincial employment laws
>
> **D.** No, because the airport authority didn't control the work

ANSWER

A. Overtime is not due because the Québec overtime rules apply even though the work is done on a federally regulated site.

EXPLANATION

The situation described in this case is based on an actual Canadian Supreme Court case involving the minimum wage. Back when the case decided, there was a federal minimum wage and it was more generous than Québec's. And the contractor's employees demanded to be paid the federal minimum wage rate for the work they did on a federally regulated airport site. But the Court rejected their claim. Since the employees worked for a Québec company, the minimum wage laws of Québec applied even when they were working on Crown lands [*Québec Minimum Wage Commission v. Construction Montcalm Inc.,* [1979] 1 S.C.R. 754]. Although it's an old case, *Montcalm* remains the law in Canada today—although we've tweaked the scenario to cover overtime since the federal minimum wage no longer exists.

Bottom Line: It's not where employees work but whom they work for that determines which employment standards laws they're subject to.

WHY WRONG ANSWERS ARE WRONG

B is wrong because legal rights and duties of employees under provincial labour law don't give way to federal laws when work is done on federal lands. According to the Court, "federal Crown lands do not constitute an extra-territorial enclave within provincial boundaries."

C is wrong because while federal laws sometimes do supersede conflicting provincial regulation, that isn't the case with employment standards laws, as illustrated by the *Montcalm* case and this scenario.

D is wrong because while control over the work does influence which employer is primarily responsible for ensuring the work is done in compliance with the laws, it doesn't determine which jurisdiction's laws apply.